

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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United States Court of Appeals for the
District of Columbia

APRIL TERM, 1936.

No. 6813

44

HELEN MAY BLOEDORN, INTERVENER, BY HER
GUARDIAN AD LITEM, APPELLANT,

vs.

WALTER A. BLOEDORN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA.

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United States Court of Appeals for the District of Columbia

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United States Court of Appeals for the District of Columbia

a District Court of the United States for the District
of Columbia

Equity No. 49,636

MAY HOWARD BLOEDORN, *Plaintiff*

vs.

WALTER A. BLOEDORN, *Defendant*

UNITED STATES OF AMERICA,
District of Columbia, ss:

BE IT REMEMBERED, that in the District Court of the
United States for the District of Columbia, at the
City of Washington, in said District, at the times
hereinafter mentioned, the following papers were
filed and proceedings had, in the above-entitled
cause, to wit:

3 *Intervening Petition of Helen May Bloedorn.*

Filed July 30 1935

* * * * *

Said Helen May Bloedorn, a minor, through George C.
Gertman, her Guardian ad Litem, with permission of the
Court obtained so to do, files this intervening petition and
respectfully avers:

1. On April 4, 1929, a bill of complaint was filed in this
cause by the plaintiff against the defendant praying, inter
alia, that the defendant be required to pay plaintiff,
monthly, an adequate amount for the support of herself
and your intervenor; it being alleged therein "that defen-
dant has abandoned plaintiff and his child, refusing to live
with them as husband and father, and neglects and refuses
to provide financially for them in an adequate manner, in
accordance with his means and earning capacity, as will
more fully appear hereafter."

These allegations were denied by the defendant in his answer to said bill filed April 12, 1929. In explanation of his inability to pay more than \$150. a month for the support of plaintiff and the intervenor, the defendant in his aforesaid answer also said:

4 "In this connection and particularly with reference to the insurance mentioned in paragraph 6 of said bill, defendant says that it is true he has carried insurance in the sum of Fifty Thousand Dollars (\$50,000.00); that he did so to protect his child and guard against her coming to want through the improvident conduct and habits of plaintiff. This said insurance is made in the form of a trust fund for the benefit of said child and has been a further considerable drain upon his moderate and reduced resources because it has and is costing him the sum of One Hundred Dollars (\$100.00) per month to carry the same, but he considers it especially valuable because of his present health and physical condition he cannot obtain any further insurance."

2. Thereafter, to wit, March 3, 1931, a final decree, in words and figures following, was entered in this cause by the Court—the plaintiff and the defendant by their record counsel assenting thereto:

"Upon consideration of the Bill of Complaint filed herein and the Answer of the defendant, it is this 3rd day of March, 1931, with the consent of the respective parties hereto and their respective counsel of record, by the Court,

"Adjudged, ordered and decreed:

"1. That the defendant, Walter A. Bloedorn, be and he hereby is directed to pay to the plaintiff, May Howard Bloedorn, the sum of Two Hundred and Seventy-five Dollars (\$275.00) per month for the support and maintenance of herself and Helen May Bloedorn, the infant child of the parties hereto, the first payment hereunder to be made on the date hereof, and a like amount to be paid on the 1st day of each and every month hereafter.

"2. That the said defendant be and he hereby is directed to retain in full force and effect the policy or policies of insurance heretofore taken out by him on his own life in the sum of Twenty-five Thousand Dollars (\$25,000.00) for the sole and exclusive benefit of the said minor child, and to make all payments of premiums due on account of said

5 policies so long as his present income remains such that he is financially able to do so, and he is further directed to do no act or thing or make any change of beneficiary thereunder so as to deprive the said infant child from receiving the benefits of the said insurance policy or policies.

“3. That the parties hereto and each of them be and they are hereby directed to refrain from molesting, interfering with, or troubling the other in their business or social relations, either directly or indirectly.

“4. That the custody of the infant child, Helen May Bloedorn, be and the same is hereby awarded to the petitioner herein, May Howard Bloedorn, provided that the defendant shall have the right and permission to visit with and enjoy the company of the said minor child at such reasonable times and under such reasonable conditions as will not interfere with the welfare of the said infant child.

“5. That the defendant be and he hereby is directed to pay to Leonard A. Block, Esq., the sum of \$150.00, as counsel fees rendered for and on behalf of the petitioner herein, besides the costs of this suit.

JESSE C. ADKINS,
Justice.”

The defendant complied with that part of said decree of March 3, 1931, directing him to pay to plaintiff \$275. per month for the support and maintenance of herself and the intervenor until December 2, 1933, when he paid only \$75., whereupon, to wit, December 20, 1933, plaintiff filed in this cause a petition praying that the defendant be required to appear and show cause why he should not forthwith pay the balance \$200. of the \$275. owing on December 1, 1933, and in default thereof be adjudged in contempt of Court. Thereupon, based upon said petition, the Court on December 20, 1933, issued a rule against the defendant to show cause as prayed in said petition, which rule and a copy of said petition was personally served upon the defendant on December 20, 1933.

6

In his answer to said petition and rule, filed January 4, 1934, the defendant set up and alleged that on November 22, 1933, the Circuit Court of Arlington County, Virginia, a Court of competent jurisdiction, in an action in-

stituted by him against the plaintiff, had entered a final decree divorcing him from the plaintiff and that by reason thereof he was no longer liable for the support of the plaintiff. To the said answer he appended a certified copy of the decree of November 22, 1933, which ordered him to pay to intervenor's mother \$75. per month beginning December 1, 1933, for her (intervenor's) maintenance; a copy of said decree being on file in this cause and by reference is made a part hereof.

Upon consideration by the Court in this cause of the plaintiff's petition filed December 20, 1933, the rule to show cause issued thereon and served upon the defendant on the same day, and the defendant's answer thereto filed January 4, 1934, the Court on January 26, 1934, entered a decree discharging the said rule, from which plaintiff, in open Court, noted an appeal to the United States Court of Appeals for the District of Columbia, and on February 12, 1934, her appeal bond upon said appeal was approved and filed.

Thereafter, to wit, February 4, 1935, the United States Court of Appeals for the District of Columbia reversed the aforesaid decree entered in this cause on January 26, 1934, with costs, and remanded the cause "with instructions to allow the alimony accrued up to the time of the filing of the husband's answer to the rule, and for such further proceed-

7 ings as may be necessary to ascertain and protect the rights of the child under the consent decree. And since the proceedings on the petition to enforce were made necessary by the default of the husband, a counsel fee may be allowed in that behalf if the trial court shall deem it proper to do so."

Thereafter the said Appellate Court supplemented and amplified its aforesaid decision by stating "that it was the intention of the Court that Mrs. Bloedorn should be allowed maintenance under the decree of the Supreme Court of the District of Columbia up to the date of the filing of the husband's answer to the rule in the proceedings to enforce that decree but no longer."

"The decree appealed from is therefore reversed, with costs, and the cause remanded with instructions to allow the maintenance up to the time of the filing of the husband's answer to the rule, but not thereafter, and for such further proceedings as may be deemed necessary to ascertain and

protect all rights of the child in the premises including her rights under the consent decree."

A copy of the aforesaid two decisions of the said Appellate Court is attached hereto, made a part hereof, and marked "Intervenor's Exhibits 1 and 2."

Thereafter, to wit, March 29, 1935, there was filed in this cause the mandate of the aforesaid Appellate Court pursuant to its aforesaid decisions, and the same is incorporated herein by reference.

3. On June 14, 1935, this Court entered the following decree in this cause:

8 "Upon consideration of the mandate of the United States Court of Appeals for the District of Columbia, the Court of its own motion appoints George C. Gertman, Guardian ad Litem for Helen A. Bloedorn, infant daughter of the plaintiff, and directs that in these proceedings he take necessary steps to ascertain and protect the rights of said infant under the consent decree heretofore entered herein."

The Helen A. Bloedorn referred to in the last mentioned decree is the same person as the intervenor who was misnamed therein, and the consent decree referred to therein is the hereinbefore mentioned decree of March 3, 1931.

4. Acting in her behalf, intervenor's guardian ad litem, George C. Gertman, on July 5, 1935, pursuant to his aforesaid appointment, wrote and mailed to the defendant at 1835 "I" Street, Northwest, a letter reading as follows:

"You perhaps know that I was appointed by Mr. Justice Letts as Guardian ad Litem for your daughter Helen in the litigation pending in our Court between you and Mrs. Bloedorn, the appointment being made, presumably, in accordance with the opinion of the Court of Appeals.

"Inasmuch as I, as Guardian ad Litem, am concerned only with two matters vitally concerning you and your daughter, namely, (1) the insurance, and (2) your daughter's adequate support, I am wondering whether they can be handled amicably and friendly. With this object in view I am writing to ascertain whether we can agree upon an arrangement which I would be justified in recommending to and obtaining the approval of the Court.

"If you care to approach this matter in a conciliatory spirit, as I am doing, I will be glad to see you and your at-

torney, Col. Crandal Mackey, at my office on Tuesday next at two o'clock.

"You will appreciate, however, that I am an officer of the Court and that I cannot enter into any definite agreement or arrangement without first submitting the same to the Court for its approval."

9 He also mailed a copy thereof to the defendant's counsel, Col. Crandal Mackey, addressed to him at his office in the National Savings & Trust Building.

The defendant did not personally acknowledge the receipt of or answer the said letter but on July 9, 1935, his said counsel wrote intervenor's guardian ad litem in answer thereto, as follows:

"I have your letter of July 5 addressed to Dr. Bloedorn. As you know, the Court of Appeals held that the divorce of Dr. Bloedorn in Virginia was valid and entitled to full faith and credit in this jurisdiction, and affirmed the decision of the court below that the Virginia decree stopped the payment of maintenance, but sent the case back to provide that the insurance of \$25,000 should be kept up as provided in the consent decree for maintenance.

"Mr. William Sullivan had the matter up before Judge Letts and he said he would enter an order providing \$75 a month for the child in accordance with the Virginia decree which provided that amount. The order was not entered because Mr. Sullivan and I could not agree on the form of the order and the judge appointed you guardian *ad litem* to represent the child. Since Judge Letts stated he would enter an order for \$75 per month, the same as the Virginia decree, there is no question about it being stated in the order that Dr. Bloedorn was to keep up the insurance and I do not see any matter in controversy.

"It costs Dr. Bloedorn \$100 a month to keep up the insurance premiums and \$75 a month is paid for the child, and those two matters have been adjudicated. I can agree with you upon an order to that effect. I have already drawn one covering the matter."

5. Said intervenor was born July 8, 1918, lives with her mother, the plaintiff at The Burlington Hotel, is attending Central High School, from which she expects to graduate in June 1936, and at the present time is attending Strayer's Business College. She owns no property and has no income

except \$75. per month paid by the defendant since
10 December 1, 1933, to her mother for her maintenance
and support pursuant to the aforesaid final decree
of the Circuit Court of Arlington County, Virginia, dated
November 22, 1933.

That while she is not actually a party plaintiff or defendant to the above entitled cause, the aforesaid consent decree entered herein on March 3, 1931, partially inured to her benefit and advantage. It is still in full force and effect and stands unreversed and unaffected by the final decree entered, as aforesaid, by the Circuit Court of Arlington County, Virginia, on November 22, 1933, to which suit she was not a party, and she has valuable rights under the aforesaid decree of March 3, 1931, which she has the right to have performed and preserved by the defendant.

By virtue of the facts and matters set forth by the defendant in his answer to the bill of complaint filed in this cause on April 12, 1929, and the consent decree entered herein on March 3, 1931, and also by virtue of the legal and moral duty of the defendant to support intervenor, she is entitled to have the aforesaid decree of March 3, 1931, performed and her rights thereunder preserved by the defendant.

6. Intervenor states that her mother, the plaintiff, has no income other than \$100. per month which she receives from her grandfather's estate, and the real estate which her mother owns is unimproved, unsalable and yields no income. On the other hand, her father, the defendant, is a prominent physician who maintains an office in the Columbia Medical Building where he practices his profession, from which, she verily believes, he receives, together with
fixed salaries and retirement pay, \$15,000. or more
11 annually, and with the exception of herself, he is
without any dependents to support.

She has no knowledge of the defendant's annual income and is without means of obtaining the information save through a discovery thereof by the defendant.

She is without any information regarding the life insurance of \$50,000. mentioned in the defendant's answer filed April 12, 1929, or the \$25,000. insurance mentioned in the aforesaid decree entered March 3, 1931, except as in said answer and decree stated. Having a vital interest and

property right in the said insurance and the policies representing the same, she has the right to know the names of the Companies in which such insurance is carried, the name of the beneficiaries thereunder, the date or dates of the maturity of said policies, whether they are paid up or have lapsed, and to have the defendant make true answer and discovery in relation thereto.

7. That \$75. per month is a wholly inadequate and insufficient amount for her support at the present time and is disproportionate with her father's income and ability to support her.

Being without any remedy in the premises save through the aid and intervention of this Honorable Court, said intervenor prays:

1st: That process issue against the defendant requiring him to appear and answer the exigency of this petition under oath, and also make true discovery as to his present financial means and income and also in relation to his life insurance.

2nd: That a decree be entered requiring the defendant to execute and perform the aforesaid decree of March 3, 1931, insofar as it concerns her and her rights thereunder.

3rd: That a decree be made requiring the defendant from and after the date of the filing of this petition to pay to her or to her mother as her natural guardian, an adequate amount for her maintenance and support commensurate with her position in society and the defendant's financial ability to support her.

4th: That her interest and estate in the life insurance referred to by the defendant in his answer filed herein on April 12, 1929, and the decree entered herein on March 3, 1931, be protected, preserved and safeguarded by appropriate decree.

5th: That a Rule be issued against the defendant upon this petition, requiring him to appear and show cause why an order should not be made, *pendente lite*, requiring him to contribute monthly a sum sufficient for the education, support and maintenance of intervenor, and that such order be made by the Court.

6th: That the cost and expenses incident to the prosecution of this intervention proceeding, including reasonable

counsel fees and guardian ad litem fees, be ordered paid by the defendant.

7th: That she may have such other and further relief in the premises as the Court deems proper.

HELEN MAY BLOEDORN,
By GEORGE C. GERTMAN
Guardian ad Litem

13 DISTRICT OF COLUMBIA, ss:

I do solemnly swear that I have read the intervening Petition of Helen May Bloedorn, minor, by me as her Guardian ad Litem subscribed, and I verily believe the facts therein stated are true.

GEORGE C. GERTMAN

Subscribed and sworn to before me this 23rd day of July, A. D. 1935.

(Seal) THERESA BUCKHANTZ
Notary Public, D. C.

30 *Answer to the Intervening Petition of Helen May Bloedorn, An Infant*

Filed October 14 1935

* * * * *

1. This respondent admits that on April 4, 1929 his wife, May Howard Bloedorn filed a bill of complaint against him claiming maintenance and admits that he denied the allegations in her complaint in his answer filed April 12, 1929.

2. Answering the second paragraph of the bill of complaint this respondent admits that there was a final decree on March 3, 1931 which was merely a consent decree which registered an agreement between the parties whereby it was provided that he was to pay his wife two hundred seventy-five dollars (\$275) per month for the support of herself and his daughter Helen May Bloedorn, and that by the consent decree he agreed to keep in effect a policy of insurance for twenty-five thousand dollars (\$25,000) for the benefit of said minor child during her infancy, and that he consented that the mother have the custody of the said child because of her tender years but it was expressly pro-

vided that he should have the right to visit with and enjoy the company of said child at all reasonable times and places; and this defendant admits that he complied with the terms of said decree up to December 2, 1933 when he ceased to do so because of the fact that he had obtained an absolute divorce from his said wife in the Circuit Court of Arlington County, Virginia and was required to pay only seventy-five dollars (\$75) per month for the support of the child. He admits his said wife obtained a rule to require him to continue payments, on which rule the court held that the Virginia decree had ended a decree for maintenance in the Supreme Court of the District of Columbia. He admits that in his answer to the petition and rule filed Janu-

ary 4, 1934, he set up the Virginia decree of November 22, 1933; and that he was no longer to support

the said wife; and that the rule obtained by her against him in the Supreme Court of the District of Columbia was discharged; and he admits that she took an appeal to the United States Court of Appeals for the District of Columbia and that the court on February 4, 1935 upheld the Virginia decree as entitled to full faith and credit but that the court remanded the cause with instructions to allow alimony up to the filing of this respondent's answer to the rule, namely, up to January 4, 1934, being a month and four days that the Court of Appeals held his wife was entitled to alimony, as balance due under the maintenance decree; and he admits that thereafter the Court of Appeals of the District of Columbia supplemented its aforesaid decision to make it plain that it was the intention of the court that Mrs. Bloedorn should be allowed maintenance under the Supreme Court of the District of Columbia up to the date of the filing of this respondent's answer to the rule to enforce that decree, but no longer, that is to say up to January 4, 1934.

3. This respondent admits the the Supreme Court of the District of Columbia on June 14, 1935 entered an order upon the mandate of the Court of Appeals for the District of Columbia appointing George C. Gertman, Esq. guardian *ad litem* for Helen May Bloedorn, infant daughter of this respondent, and directing him to take the necessary steps to ascertain and protect the rights of said daughter under this decree.

4. This respondent admits that said George C. Gertman, Esq. wrote this respondent on July 5, 1935 the letter which he sets out in full in the petition, and that this respondent answered the same as set out in said petition.

5. This respondent admits his said daughter was born July 8, 1918 and admits that he is paying her seventy-five dollars (\$75) per month for her maintenance under
32 the Virginia decree and has been paying such amount since December 1, 1933 to her mother as provided in the decree of the Circuit Court of Arlington County, Virginia dated November 22, 1933. This respondent avers that he has never done anything to avoid the effect of the consent decree of March 3, 1931 in so far as the rights of his child are concerned.

Further answering said paragraph five of said petition, this respondent avers that it was not essential that the infant child of this respondent should be party to the suit for divorce in the Circuit Court of Arlington County, Virginia; and that the order for the support of said infant entered by said court was an incident to said suit and that said order for the maintenance of the child is just as much entitled to full faith and credit in the District of Columbia as any other part of said decree and said decree did not undertake to interfere with any of the rights of the infant under the decree of the Supreme Court of the District of Columbia entered on March 3, 1931 although the infant was not a party to that suit and the allowance made in that suit for the maintenance of this respondent's wife and child left to the discretion of his said wife the amount she should spend on said child for its proper support and maintenance and said decree does not undertake to prescribe what sum was or is necessary to the support of said child. This respondent avers that there never was any question raised by him before the filing of the petition by the said guardian *ad litem* as to any intent upon the part of this respondent to avoid the said decree of the Supreme Court of the District of Columbia of March 3, 1931, or to question the legal and moral obligation of this respondent to support his child; or to question the fact that the insurance upon this respondent's life for the amount of twenty-five thousand dollars for the benefit of said child was to be interfered with, as is apparent by the brief filed in the Court of Appeals in this case by this

33 respondent through his counsel. But this respondent avers and is proper that the court should know that his said daughter has for more than three years shown him no filial affection whatsoever, nor has she during that time come near him or communicated with him by letter or otherwise although through all her life this respondent has treated her with every consideration and affection and has never shown her any unkindness or lack of interest or sympathy and her attitude towards him is entirely unjustified and is due to the fact that she is under the domination of her mother and that part of the decree of March 3, 1931 has been wholly ignored by said child and by her mother although it expressly provides that this respondent should have the right to visit with and enjoy the company of said child at all reasonable times and places. And this respondent avers that the last time his daughter visited him was three years ago when she called to demand more money for her mother who was then being paid by this respondent two hundred seventy-five dollars (\$275) a month and had an income, in addition thereto, from the estate of her grandfather; and at that time the language of said child and her attitude toward this respondent were both disrespectful and insulting and yet he treated her with kindness and affection; and thereafter she took from this respondent's office a pile of private papers and records and disappeared carrying them away in her hands which caused him loss and embarrassment and great inconvenience and that is the last time that she has ever come near him.

This respondent further avers that the matter of the allowance to be made for the support and maintenance of said child was taken up before Mr. Justice Letts of the Supreme Court of the District of Columbia on May 23, 1935, and at that time he stated from the bench, after full presentation of the matter by counsel, that he would enter an order for the same amount decreed for the support of said child by the Circuit Court of Arlington County, Virginia, namely, seventy-five dollars (\$75) per month, but said order was not entered because Mr. Justice Letts stated that

34 he desired the child to be represented by a guardian *ad litem*.

Further answering said petition, this respondent says that the decree of the Circuit Court of Arlington County,

Virginia which awarded the said child seventy-five dollars (\$75) a month and which was entered on November 22, 1933, was made while the mother and child were both being actively represented by two counsel and this respondent states that he was informed at that time by this respondent's counsel that William C. Mackall, Esq., leading counsel for his wife in said case, consented to an order of sixty-five dollars (\$65) per month as sufficient for the support and maintenance of said child, which order the Circuit Court changed to seventy-five dollars per month when the decree was entered, and an exemplified copy of said decree filed in the record shows that said counsel for Mrs. Bloedorn saw and made no objection to the amount so fixed by the court. And this respondent avers that no change has taken place in the circumstances of the child since that time to justify the increase of said amount.

6. Answering the sixth paragraph of said petition, this respondent says that he does not know the present income of the mother of said child but believes it far in excess of one hundred dollars (\$100) a month as stated by her. He denies that he has an income or ever did have an income of fifteen thousand dollars (\$15,000) or more annually and states that his net income up to January 1, 1935 was nine thousand nine hundred eleven dollars and seventy-four cents (\$9,911.74) a year without any deduction for specific exemptions allowed under the income tax law; and that he is married and he believes that if the mother expends the amount of seventy-five dollars (\$75) per month upon the said child that it will be more than enough to provide for all the needs of said child who is attending the public school.

Further answering said paragraph six, this respondent says that he carries the following life insurance policies which show that, while said decree obligates him
35 to maintain twenty-five thousand dollars (\$25,000) insurance for the benefit of his daughter that notwithstanding her unnatural conduct toward him, he has maintained insurance to the amount of thirty-seven thousand five hundred (\$37,500) for the benefit of said daughter, payable to her through trustees and fifteen thousand dollars (\$15,000) payable to his estate, she being his only heir; and in addition thereto he made a will providing that she was to have

all his property and estate. The following is a list of policies:

Policies Payable to Daughter

Policy No. 3267R.I., Navy Mutual Aid Association, \$7,500
Policy No. 579306, Aetna Life, \$10,000
Policy No. 79732, Travelers, \$5,000
Policy No. 79733, Travelers, \$5,000
Policy No. 4223846, Prudential, \$5,000
Policy No. 2355479, Prudential, \$4,000
Policy No. 1796147, Prudential, \$1,000

Policies Payable to Estate

Policy No. 466728, John Hancock Mutual, \$5,000
Policy No. 222153, United States Government Life Insurance, \$10,000

This respondent avers, relative to said policies, that they are costing him about one hundred dollars per month to maintain at this time and that if he does make any change in the beneficiary that he will not and never has had any intention of disobeying the order of the court requiring him to maintain twenty-five thousand dollars insurance for the benefit of his daughter as provided in said decree of March 3, 1931.

AND NOW having fully answered said petition, this respondent prays that he may be hence dismissed with reasonable cost.

(Sgd) WALTER A. BLOEDORN

I, Walter A. Bloedorn, upon oath say, that I have read the foregoing petition by me subscribed and know the contents thereof, and that the matters therein stated as of my personal knowledge are true, and those stated on
36 information and belief, I believe to be true.

WALTER A BLOEDORN

Subscribed and sworn to before me this 14th day of October, A.D. 1935.

WILLIAM C. DELACY

(Seal)

Notary Public, D. C.

CRANDAL MACKEY

37

Memorandum of Court

Filed November 21 1935

* * * * *

1—I construe the opinion of the United States Court of Appeals to mean that Mrs. Bloedorn is entitled to maintenance under the decree in this court for the month of December, 1933 and for the first four days of January, 1934.

2—The opinion of the Court of Appeals states that a counsel fee might be allowed if the trial court deemed it proper to do so. The appeal resulted in advantage to both Mrs. Bloedorn and the daughter. I think a fee should be allowed in the sum of \$300. I do not include services in applying for a writ of certiorari.

3—The order above allowed certain costs. To this I think should be added only the costs subsequently incurred in this court.

4—As to the insurance for the daughter's benefit, counsel agreed that her rights are fixed by the original decree in this court and the only present function of the court is to construe that decree.

In my judgment the original decree requires the father to keep the insurance in force only until the daughter attains her 21st birthday.

5—Upon all the evidence and in view of the requirement that the father maintain insurance for the benefit of the daughter I find that \$100 per month is a reasonable allowance for her support. This allowance should run from January 5, 1934 and be subject to credit for amounts heretofore paid.

6—The court costs of this proceeding and a reasonable counsel fee to the guardian ad litem should be paid by the father. If counsel cannot agree upon the amount that question can be submitted to the court.

November 21 1935

JESSE C ADKINS

Justice

Findings of Fact.

Filed December 23 1935

* * * * *

This cause coming on to be heard upon the mandate of the United States Court of Appeals for the District of Columbia in cause No. 6215 on its docket, the Court finds the facts as follows:

1. On April 4, 1929, the plaintiff filed her bill in this cause to require the defendant to support and maintain her and their child, the intervenor Helen May Bloedorn.

2. On March 3, 1931, this Court entered its final decree for maintenance, by consent of the parties, requiring the defendant, among other things, to pay to the plaintiff the sum of \$275.00 per month for the support of herself and their said child, such payments to be made on the first day of each and every month, and to retain in full force and effect the policy or policies of insurance theretofore taken out by him on his own life in the sum of \$25,000.00 for the sole and exclusive benefit of the said minor child and to make all payments of premiums due on account of said policies so long as his then income remains such that he should be financially able to do so, and to do no act or thing or to make any change of beneficiary thereunder so as to deprive the said infant child from receiving the benefits of said insurance policy or policies.

3. Thereafter, to wit, on the 22d day of November, A. D. 1933, the Circuit Court of the County of Arlington, Virginia, passed its decree granting to the defendant an absolute divorce from the plaintiff, and required the defendant to pay to the plaintiff the sum of \$75.00 per month for the maintenance of their said child from December 1, 1933.

4. Thereafter, to wit, on the 1st day of December, A. D. 1933, there became payable by the defendant to the plaintiff under the aforesaid decree of March 3, 1931, the sum of \$275.00, and on, to wit, the 2d day of December, A. D. 1933, the plaintiff made payment of but \$75.00 thereof.

5. Thereafter, to wit, on the 1st day of January, A. D. 1934, there became payable by the defendant to the plaintiff under the aforesaid decree of March 3, 1931, the sum of

\$275.00, and, on, to wit, the 2d day of January, A. D. 1934, the plaintiff made payment of but \$75.00 thereof.

6. In the meantime, on, to wit, the 20th day of December, A. D. 1933, the plaintiff filed in this cause her petition to require the defendant to pay the unpaid balance of \$200.00 which became due and payable on December 1, 1933, as aforesaid, and on, to wit, the 4th day of January, A. D. 1934, the defendant filed his answer to the said petition in which he set up the granting of the divorce to him on November 22, 1933 as aforesaid.

7. The unpaid portions of the maintenance payable for the months of December, 1933, and January, 1934, is at the rate of \$6.66 $\frac{2}{3}$ per day, and for the first four days of the month of January, 1934, is \$26.67.

8. The plaintiff on her aforesaid appeal No. 6215 paid a bond premium of \$5.00 and to the Clerk of this Court the sum of \$24.95, in addition to the sum of \$107.55 costs in the United States Court of Appeals for the District of Columbia, and \$38.15 for printing her brief on her said appeal.

9. After the decision of the United States Court of Appeals aforesaid she applied to the Supreme Court of the United States for writ of certiorari to review the
40 said decision and in that connection incurred costs in the sum of \$56.25 paid to the Clerk of the Supreme Court of the United States and \$32.50 for printing her petition for certiorari.

10. The defendant has kept in force and there are now in force policies of insurance in the aggregate principal sum of \$37,000.00 being \$12,000.00 in excess of the requirements of the aforesaid decree of this Court of March 3, 1931.

11. The defendant's net income during the calendar year 1934 was about \$9500 after payment of income tax.

12. The child of the plaintiff and defendant, the intervenor, Helen May Bloedorn, was born on July 8, 1918, is attending Central High School from which she expects to graduate in June, 1936, during the past summer she attended summer high school for the purpose of assisting her in her studies and her final year in high school, and also attended Strayer's Business College, and she had been prior thereto taking lessons on the violin and piano which have been suspended for want of means with which to pay

for the same, and after her graduation from high school she desires to enter college or a law school.

13. The plaintiff and the said child of the plaintiff and defendant reside together at the Burlington Hotel in a one room and bath apartment, the cost of which is \$60.00 per month.

14. On, to wit, the 13th day of August, A. D. 1935, this Court entered its order requiring the defendant to pay to the plaintiff as the custodian of their said child the sum of \$100.00 per month *pendente lite* for her maintenance, support and education, the said decree to become effective on

and after January 4, 1934, and all payments of \$75.00
41 made by the defendant under the Virginia decree since that date to be credited upon the amount payable under the same, and thereafter, to wit, on the 14th day of August, A. D. 1935, this Court modified the last mentioned decree by eliminating therefrom the proviso that it should become effective on and after January 4, 1934, and that all payments of \$75.00 made by the defendant under the Virginia decree since that date should be credited upon the amount payable thereon.

15. In view of the requirement of the said decree of March 3, 1931, that the defendant maintain insurance for the benefit of the daughter, \$100.00 per month is a reasonable allowance for her support. It should run from January 5, 1934, and be subject to credits for amounts heretofore paid.

16. The plaintiff has paid to William C. Sullivan, her attorney, a total of \$300.00 on account of fees for professional services rendered by him, \$50.00 on December 2, 1933, \$50.00 on December 20, 1933, \$100.00 on March 1, 1934, and \$100.00 on February 13, 1935, and he has requested an allowance of \$500.00 up to the time of the filing in this Court of the petition for an order on the mandate of the United States Court of Appeals for the District of Columbia and an additional \$100.00 for services rendered since that time, or a total of \$600.00, and he has advised the Court that all payments made to him in excess of the unpaid balance of \$300.00 claimed by him will be by him refunded to the plaintiff. An allowance of \$300.00 is made to the said William C. Sullivan as attorney for the plaintiff.

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Conclusions of Law.

1. The plaintiff is entitled to receive from the defendant and he shall forthwith pay to her the sum of \$266.67 as maintenance unpaid under the decree of March 3, 1931 for the month of December, A. D. 1933, and for only the first four days of January, A. D. 1934,

2. A counsel fee should be allowed to the plaintiff for services rendered in connection with her appeal No. 6215 to the United States Court of Appeals for the District of Columbia and in this Court since the coming down of the mandate, but not for any services rendered in connection with the plaintiff's application to the Supreme Court of the United States for a writ of certiorari.

3. The plaintiff should receive of the defendant the costs of \$107.55 allowed in the mandate of the United States Court of Appeals for the District of Columbia but should not be allowed her costs on the said appeal in this Court in the sum of \$24.95 or her bond premium on the said appeal or the cost of printing her brief on the said appeal or any of her costs or expenses in connection with her application to the Supreme Court of the United States for writ of certiorari.

4. The decree of March 3, 1931 requires the defendant to keep in force the insurance therein mentioned only until the daughter of the plaintiff and the defendant, the intervenor Helen May Bloedorn, attains her twenty-first birthday.

JESSE C ADKINS

Justice.

The parties adopt the foregoing findings of fact as an agreed findings of fact and will stipulate the same for the purposes of appeal.

WILLIAM C. SULLIVAN

Attorney for Plaintiff.

GEORGE C GERTMAN

*Guardian Ad Litem for
Helen May Bloedorn.*

Order on Mandate.

Filed March 18 1936

* * * * *

Upon consideration of the mandate of the United States Court of Appeals for the District of Columbia, heretofore filed in the above entitled cause, and the several petitions thereafter filed, including the intervening petition of Helen May Bloedorn, by George C. Gertman, her guardian *ad litem*, and after hearing the evidence offered, it is thereupon by the Court this 18th day of March, A. D. 1936, ADJUDGED, ORDERED and DECREED as follows:

1. That the plaintiff is entitled to maintenance only to and including the 4th day of January, A. D. 1934, the day of the filing of the answer of the defendant to the plaintiff's petition for compliance with decree and for a rule to show cause, which petition was filed on the 20th day of December, A. D. 1933, and as such maintenance the defendant forthwith pay to the plaintiff the sum of Two Hundred and Twenty-six and 67/100 (\$226.67) Dollars.

2. That the plaintiff is entitled to recover in this cause the costs allowed her by the Court of Appeals and her taxable costs in this cause, and as such the defendant shall forthwith pay to the plaintiff and she shall recover
44 of him her costs in the United States Court of Appeals for the District of Columbia in the sum of One Hundred and Seven and 55/100 (\$107.55) Dollars.

3. The defendant shall pay plaintiff's counsel fees in the United States Court of Appeals for the District of Columbia and in this Court subsequent to the date of the aforesaid mandate, but not including any counsel fees in connection with the plaintiff's application to the Supreme Court of the United States for a writ of certiorari, and the defendant shall therefore forthwith pay to the plaintiff or to her attorney of record as such counsel fees the sum of Three Hundred (\$300.00) Dollars.

4. The defendant is by the terms of paragraph numbered 2 of the final decree in this cause of the 3rd day of March, A. D. 1931, required to keep in force the policy or policies of insurance in the amount of Twenty-five Thousand (\$25,000.) Dollars, to which reference is made in paragraph numbered 2 of the said decree, until the infant daughter,

Helen May Bloedorn, of the plaintiff and the defendant shall attain the age of twenty-one (21) years, and no longer, that is to say, until the 8th day of July, A. D. 1939, and no longer.

5. Said policies of insurance being as follows:

(a) Policy No. 2355479, issued by The Prudential Insurance Company of America, dated March 28, 1917, insuring Walter A. Bloedorn in the amount of \$4,000., the annual premium being \$75.64 payable on or before the 28th day of March of each year, and which policy by endorsement thereon under date of January 17, 1936, is payable
45 to Helen May Bloedorn, daughter of the insured.

(b) Policy No. 4223846, issued by The Prudential Life Insurance Company of America, dated March 15, 1923, insuring Walter A. Bloedorn in the amount of \$5,000., the annual premium being \$130.25 payable on or before the 15th day of March of each year, and by endorsement thereon under date of January 16, 1936, one-half of the insurance of \$5,000. is payable to Helen May Bloedorn, daughter of the insured, if she be alive at the date of the death of the insured.

(c) Policy or Certificate of Membership No. 3267 R. I., issued by The Navy Mutual Aids Association, dated January 7, 1936, insuring Walter A. Bloedorn in the amount of \$7,500., said policy or certificate being payable to Helen May Bloedorn, daughter of the insured.

(d) Policy No. K-222153, issued by the United States of America, dated November 1, 1920, insuring Walter A. Bloedorn in the amount of \$10,000., the annual premium being \$194.90 payable on or before the 1st day of November of each year, and by endorsement thereon under date of January 7, 1936, said policy is payable to Helen May Bloedorn, daughter of the insured.

(e) Policy No. 385, issued by The Shenandoah Life Insurance Company, dated April 1, 1931, insuring Walter A. Bloedorn in the amount of \$1,000., the annual premium being \$67.98 payable on or before the 1st day of April of each year, and which policy is payable to Helen May Bloedorn, daughter of the insured.

46 That the defendant Walter A. Bloedorn shall exhibit said policies and the renewal receipts showing the same continued in full force and effect and pay-

able as aforesaid, to the said infant or her representative in the month of April of each year, beginning April 1936. Until the 9th day of July, 1939, the defendant Walter A. Bloedorn shall not change the name of the beneficiary in said policies or make any disposition whatsoever of said policies and the same shall not be subject to the process of any other Court or be assigned or transferred in any manner whatsoever, or be or become liable for the payment of any other obligations of the said Walter A. Bloedorn.

6. The defendant shall pay to the plaintiff as the natural guardian of Helen May Bloedorn, the infant daughter of the plaintiff and the defendant, the sum of One Hundred (\$100.00) Dollars per month for the maintenance, support and education of said Helen May Bloedorn, on the first day of each and every month, beginning as of the 5th day of January, A. D. 1934, which arrearage the defendant shall pay forthwith, but shall be entitled to credit against the same for all amounts heretofore paid by him as for the period of time between the 5th day of January, A. D. 1934 and the date of this order.

7. A reasonable allowance to George C. Gertman, guardian *ad litem* by the Court appointed for Helen May Bloedorn, the infant daughter of the plaintiff and the defendant, is the sum of Two Hundred (\$200.00) Dollars, and the defendant shall forthwith pay to the said George C. Gertman the said sum of Two Hundred (\$200.) Dollars and the amount of his expenses in connection with his said guardianship in the sum of Twenty (\$20.) Dollars, and shall also pay the costs of the present proceeding.

47 8. The plaintiff is not entitled to recover of the defendant the premium on her appeal bond to the United States Court of Appeals for the District of Columbia on her former appeal, the costs in this Court of her said appeal, the expenses of printing her brief in that Court or any of the costs or expenses connected with or incident to her application to the Supreme Court of the United States for writ of certiorari.

JESSE C ADKINS

Justice.

Helen May Bloedorn, by her guardian *ad litem*, in open Court notes an appeal to the United States Court of Appeals for the District of Columbia from so much of the foregoing decree as decrees that the defendant is only required by the decree of March 3, 1931, to keep in force the policy or policies of insurance of \$25,000. until Helen May Bloedorn attains the age of twenty-one years, and also from so much of the foregoing decree as requires the defendant to pay only the sum of \$100.00 per month for her maintenance, support and education; authority being hereby given said guardian *ad litem* to prosecute this appeal in behalf of said Helen May Bloedorn. The amount of the cost bond on said appeal is hereby fixed at the sum of \$100.00, which said guardian *ad litem* is authorized to sign and execute in behalf of the said Helen May Bloedorn.

JESSE C ADKINS

Justice.

Seen:

CRANDAL MACKEY

Attorney for defendant.

Seen:

GEORGE C. GERTMAN

48

Memoranda

APRIL 9—1936.

Bond (\$100) of Helen May Bloedorn on appeal approved and filed.

Statement of Evidence filed and signed.

Assignment of Errors

Filed April 9—1936

* * * * *

In entering the final decree herein on the 18th day of March, 1936, the Court erred as follows:

1. In requiring the defendant to keep the life insurance in force only until his daughter Helen May Bloedorn attains her twenty-first birthday.

2. In not requiring the defendant Walter A. Bloedorn to keep the insurance in force for the benefit of his said daughter during her lifetime and so long as he lives.

3. In failing to construe the decree of March 3, 1931, and the decision of the Court of Appeals of February 4, 1935 and its subsequent opinion amplifying the same of March 11, 1935, as requiring the defendant Walter A. Bloedorn to keep in force the life insurance for the benefit of the intervener Helen May Bloedorn, during her lifetime.

4. In failing to require the defendant to pay more than \$100. a month for the maintenance, support and education of the intervener during her minority.

GEORGE C. GERTMAN

Guardian ad litem for Intervener Helen May Bloedorn.

Service of copy of the foregoing Assignment of Errors acknowledged this 9th day of April, 1936.

CRANDAL MACKEY

Attorney for Defendant.

Endorsed: Original No. 2660. United States Court of Appeals for the District of Columbia. Order Extending Time to File Record. United States Court of Appeals for the District of Columbia. Filed Jul 24 1936. Moncure Burke, Clerk.

51 District Court of the United States for the District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered from 1 to 49, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 49636 in Equity, wherein May Howard Bloedorn is Plaintiff and Walter A. Bloedorn is Defendant, as the same remains upon the files and of record in said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 22nd day of July, 1936.

(Seal) C. E. STEWART,
Clerk.

52 Endorsed: United States Court of Appeals for the
District of Columbia, Filed Aug 20 1936. Moncure
Burke, Clerk.

In the Supreme Court of the District of Columbia

Equity No. 49636

MAY HOWARD BLOEDORN, *Plaintiff*,

VS.

WALTER A. BLOEDORN, *Defendant*.

Filed Apr 9—1936

Statement of Evidence

At the trial and hearing of the above entitled cause, the following evidence was offered and admitted in behalf of the intervenor Helen May Bloedorn:

1. That the annual net income of her father, the defendant Walter A. Bloedorn, is between \$9,000. and \$10,000.

2. That intervenor's mother, plaintiff May Howard Bloedorn, has no property or estate other than the income of \$100. a month from her grandmother's estate and several unimproved, unproductive and unsalable lots worth approximately \$300. or \$400.

3. That \$100. a month is wholly inadequate and insufficient to support and educate the intervenor.

4. Bill of complaint filed by the plaintiff against the defendant on April 4, 1929, and the defendant's answer thereto filed April 12, 1929.

5. Decree of the Court dated March 3, 1931.

53 6. Plaintiff's petition filed December 30, 1933, and
the defendant's answer thereto filed January 4, 1934.

7. Opinion of the Court of Appeals dated Febru-

ary 4, 1935, and its subsequent opinion amplifying the same dated March 11, 1935.

8. Decree of June 14, 1935.

JESSE C ADKINS

Justice

We consent hereto:

GEORGE C. GERTMAN

*Guardian ad litem for In-
tervenor Helen May Bloedorn.*

CRANDAL MACKEY

Attorney for Defendant.

Endorsed: Eq. No. 49636. Bloedorn v. Bloedorn. Statement of Evidence. Filed Apr 9—1936.

54 United States Court of Appeals for the District of
Columbia.

Original No. 2660

April Term, 1936.

HELEN MAY BLOEDORN, Intervener, by her guardian *ad litem*,
Appellant,

VS.

WALTER A. BLOEDORN, *Appellee*

Endorsed: United States Court of Appeals for the District of Columbia. Filed Aug 20 1936. Moncure Burke, Clerk.

*Stipulation Under Sub-Paragraph 2 of Paragraph 74 of the
Rules of This Honorable Court.*

It is hereby stipulated and agreed by and between the Appellant and the Appellee, by their respective counsel, that the following shall constitute the printed transcript on appeal.

1. Intervening Petition of the Appellant, Helen May Bloedorn, filed July 30, 1935, excluding the decision of the Court of Appeals attached thereto as an exhibit.

2. Answer of the Appellee, filed October 14, 1935, to Appellant's Intervening Petition.

3. Statement of the Evidence, filed April 9, 1936.
4. Memorandum of the Court filed November 21, 1935.
5. Findings of Fact and Conclusions of Law made by the Court, filed December 23, 1935.
6. Final Decree, entered on the 18th day of March, 1936.
7. Assignment of Errors, filed April 9, 1936.
8. This Stipulation.

GEORGE C. GERTMAN

Attorney for Appellant

CRANDAL MACKEY

Attorney for Appellee

Endorsed on Cover: District Court of the United States. District of Columbia. No. 6813. Helen May Bloedorn, Intervener, by her guardian ad litem, Appellant, vs. Walter A. Bloedorn. United States Court of Appeals for the District of Columbia. Filed Aug 20 1936. Moncure Burke, Clerk.

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

FILED NOV 9 - 1936

United States Court of Appeals
for the District of Columbia

Curran
CLERK

April Term, 1936

No. 6813

HELEN MAY BLOEDORN, Intervener, by Her Guardian
ad Litem, *Appellant*,
vs.

WALTER A. BLOEDORN

APPELLANT'S BRIEF

GEORGE C. GERTMAN,
Guardian ad Litem for,
HELEN MAY BLOEDORN.

United States Court of Appeals for the District of Columbia

April Term, 1936

No. 6813

HELEN MAY BLOEDORN, Intervener, by Her Guardian
ad Litem, *Appellant*,

vs.

WALTER A. BLOEDORN

APPELLANT'S BRIEF

The Questions Presented

This appeal presents two questions for review:

First: Whether the decree of March 3, 1931, *infra*, requires the appellee to carry insurance on his life for the benefit of appellant during her lifetime, or only until she attains her majority as was held by the lower Court (R. 20-21).

Second: Whether the allowance of \$100 a month (R. 22) made for appellant's support and education is adequate and commensurate with appellee's annual net income which in the year 1934 was about \$9,500 (R. 17).

Statement

On March 3, 1931 the following decree was entered in this cause (R. 2, 3)—

"Upon consideration of the Bill of Complaint filed herein and the Answer of the defendant, it is this 3rd day of March, 1931, with the consent of the respective parties hereto and their respective counsel of record, by the Court,

"Adjudged, ordered and decreed:

"1. That the defendant, Walter A. Bloedorn, be and he hereby is directed to pay to the plaintiff, May Howard Bloedorn, the sum of Two Hundred and Seventy-five Dollars (\$275.00) per month for the support and maintenance of herself and Helen May Bloedorn, the infant child of the parties hereto, the first payment hereunder to be made on the date hereof, and a like amount to be paid on the 1st day of each and every month hereafter.

"2. That the said defendant be and he hereby is directed to retain in full force and effect the policy or policies of insurance heretofore taken out by him on his own life in the sum of Twenty-five Thousand Dollars (\$25,000.00) for the sole and exclusive benefit of the said minor child, and to make all payments of premiums due on account of said policies so long as his present income remains such that he is financially able to do so, and he is further directed to do no act or thing or make any change of beneficiary thereunder so as to deprive the said infant child from receiving the benefits of the said insurance policy or policies.

"3. That the parties hereto and each of them be and they are hereby directed to refrain from molesting, interfering with, or troubling the other in their business or social relations, either directly or indirectly.

"4. That the custody of the infant child, Helen May Bloedorn, be and the same is hereby awarded to the petitioner herein, May Howard Bloedorn, provided that the defendant shall have the right and permission to visit with and enjoy the company of the said minor child at such reasonable

times and under such reasonable conditions as will not interfere with the welfare of the said infant child.

This decree was before the Court on a former occasion in litigation between appellant's parents. 1935 Wash. Law Rep., p. 226.

Construing said decree, this Court, then said—

“In March 1931 a decree was entered by consent of the parties and without evidence, which required the husband to pay \$275 per month for support of the wife and child; to maintain an existing insurance upon his life for the benefit of the child in the sum of \$25,000; awarding custody of the child to the mother with right of visitation in the father; and enjoining each party from molestation of the other.”

And in its decision the Court also said—

“But the lump sum allowance for the wife included a provision for the daughter from month to month, which, in view of the peculiar circumstances, is not necessarily to be vacated or modified because the Virginia decree divorces her parents and allows \$75 per month for the daughter, in the custody of her mother in the District of Columbia. (Citations) And this decree also awards what is perhaps the most valuable property right involved in the litigation to the person who is certainly the most innocent connected therewith, when it requires the father to maintain his life insurance for the benefit of his daughter. This requirement was made after the husband had set forth his faculties and claimed credit of \$100 per month for the cost of this insurance in determining his net income out of which allowances should be made. This expense was therefore taken into the calculations of the court and the parties when the consent decree was entered, and is in the nature of a valuable consideration enuring to the husband in respect of this provision for his daughter.

“Since the decree for maintenance proceeded by consent of parties in a competent court, it is both a contract and a judgment, open neither to direct appeal nor collateral attack, except in the court where it was made upon a proper showing of changed conditions.”

In remanding the former case to the lower Court, it was ordered—

“The decree appealed from is therefore reversed, with costs, and the cause remanded * * * for such further proceedings as may be necessary to ascertain and protect the rights of the child under the consent decree.”

At the time the decree was made, the lower Court had before it appellee's answer to the bill of complaint, in which he said (R. 2)—

“In this connection and particularly with reference to the insurance mentioned in paragraph 6 of said bill, defendant says that it is true he has carried insurance in the sum of Fifty Thousand Dollars (\$50,000.00); that he did so to protect his child and guard against her coming to want through the improvident conduct and habits of plaintiff. This said insurance is made in the form of a trust fund for the benefit of said child and has been a further considerable drain upon his moderate and reduced resources because it has and is costing him the sum of One Hundred Dollars (\$100.00) per month to carry the same, but he considers it especially valuable because of his present health and physical condition he cannot obtain any further insurance.”

Assignments of Error

In entering the final decree herein on the 18th day of March, 1936, the Court erred as follows:

1. In requiring the defendant to keep the life insurance in force only until his daughter Helen May Bloedorn attains her twenty-first birthday.

2. In not requiring the defendant Walter A. Bloedorn to keep the insurance in force for the benefit of his said daughter during her lifetime and so long as he lives.

3. In failing to construe the decree of March 3, 1931, and the decision of the Court of Appeals of February 4, 1935 and its subsequent opinion amplifying the same of March 11, 1935, as requiring the defendant Walter A. Bloedorn to keep in force the life insurance for the benefit of the intervener Helen May Bloedorn, during her lifetime.

4. In failing to require the defendant to pay more than \$100 a month for the maintenance, support and education of the intervener during her minority.

Argument

(Note: This appeal is prosecuted by the intervener through her Guardian ad Litem under authority of the lower Court (R. 23), and regardless of its disposition provision should be made by the Court for the payment of compensation for the services of the Guardian ad Litem in connection with this appeal and the reimbursement to him of the cost of the premium on appellant's appeal bond, the cost of printing the record and this brief as he advanced the same because appellant was unable to do so.)

Upon the first question presented, this Court in its former decision indicated its position, namely, that appellee must carry insurance upon his life for the benefit of appellant during her lifetime in the amount of \$25,000.

Upon the second question presented, it is contended that the allowance of \$100 per month for the maintenance and education of appellant is wholly inadequate and it is not commensurate with appellee's

ability to properly support his daughter, the lower Court having found as facts (R. 17) that—

“12. The child of the plaintiff and defendant, the intervener, Helen May Bloedorn, was born on July 8, 1918, is attending Central High School from which she expects to graduate in June, 1936, during the past summer she attended summer high school for the purpose of assisting her in her studies and her final year in high school, and also attended Strayer's Business College, and she had been prior thereto taking lessons on the violin and piano which have been suspended for want of means with which to pay for the same, and after her graduation from high school she desires to enter college or a law school.

“13. The plaintiff and the said child of the plaintiff and defendant reside together at the Burlington Hotel in a one room and bath apartment, the cost of which is \$60.00 per month.”

The evidence (R. 25) shows that appellant's mother has an income of \$100 a month and owns no property other than a few unproductive lots worth \$400.

For the reasons stated, the appealed decree should be reversed in both particulars with costs.

Respectfully submitted,

GEORGE C. GERTMAN,
Guardian ad Litem for,
HELEN MAY BLOEDORN.

FILED NOV 22 1936

Monroe R. R. R.
CLERK

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA.

APRIL TERM, 1936.

—
No. 6813.
—

HELEN MAY BLOEDORN, INTERVENER, BY HER GUARDIAN
AD LITEM, *Appellant*,

v.

WALTER A. BLOEDORN, *Appellee*.

—
BRIEF FOR APPELLEE.
—

CRANDAL MACKEY,
Attorney for Appellee.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA.

APRIL TERM, 1936.

No. 6813.

HELEN MAY BLOEDORN, INTERVENER, BY HER GUARDIAN
AD LITEM, *Appellant*,

v.

WALTER A. BLOEDORN, *Appellee*.

BRIEF FOR APPELLEE.

STATEMENT OF FACTS.

This case is part of the case of *Bloedorn v. Bloedorn*, decided by this Court of Appeals on the 4th day of February, 1935, and reported in 64 D. C. Appeals at page 199. This Court gave full faith and credit to the decree of divorce obtained in Virginia by Dr. Walter A. Bloedorn, but sent the case back to the lower court to have Mrs. Bloedorn paid some accrued main-

tenance money, and also to make provision for the daughter of the parties, with respect to her maintenance, and keeping alive the insurance which had been agreed upon in the consent decree which was for maintenance of Mrs. Bloedorn, whose right to further maintenance had been extinguished by the Virginia decree. The court below then appointed a guardian *ad litem* for the infant, an intervening petition was filed for the infant, and answer to the same by counsel for Dr. Bloedorn, and the matter came up for hearing before Justice Adkins upon the pleading and evidence (Rec. p. 15, par. 5) and he filed a memorandum (Rec. 15) construing the opinion of this Court and finding that a reasonable allowance for the child would be a hundred dollars per month, and that the father should keep up the insurance on his life for the daughter until she reached the age of twenty-one years. Thereafter the court filed the findings of fact (Rec. 16) finding among other things that Dr. Bloedorn should pay a hundred dollars per month for the support of his daughter until she reached the age of twenty-one years, and also that he should keep up the insurance on his life for the benefit of his daughter until she reached the age of twenty-one years. A decree was then entered in accordance with the mandate of this court of appeals, and the findings of fact, requiring Dr. Bloedorn to pay one hundred dollars per month for the support of his child and to keep alive the policies of insurance to the amount of twenty-five thousand dollars until his daughter reached the age of twenty-one years.

From these two parts of the order an appeal is taken by the guardian *ad litem* to this Court of Appeals.

Attention is called to the fact that the guardian *ad litem*, a capable lawyer of long experience, does not cite a single case in his brief to support his appeal, but modestly suggests on page 5 of his brief that this court make provision for his fee for taking this case where it is now, "regardless of its disposition."

THE LAW OF THE CASE.

Regarding the allowance to the daughter of a hundred dollars per month for her support, this court will take notice of the fact that there is nothing in the record to show that the allowance is not enough or that it is unreasonable. The bare fact of Dr. Bloedorn's income is mentioned in the record and nothing more.

Rulings of the trial court upon matters of fact cannot be disturbed by this court, where the facts upon which those rulings are based are not brought before this court.

Clapp v. Macfarland, 20 App. D. C. 224.

The rule that where the lower court heard and saw the parties and their witnesses, observed their demeanor while testifying, and acted in good faith, the findings will not be disturbed on appeal merely because the appellate court might have arrived at a different conclusion, has always been followed by this court of appeals.

Shelley v. Westcott, 23 Appeals, D. C. 135.
Marschalk v. Marschalk, 45 Appeals, D. C. 455.
McLaren v. McLaren, 45 D. C. Appeals 237.
Topham v. Topham, 49 D. C. Appeals 308.
Snow v. Snow, 50 Appeals, D. C. 242.
Holmes v. Holmes, 52 Appeals, D. C. 93.

Burroughs v. Burroughs, 55 Appeals D. C. 271.

Same v. Same, 55 Appeals, D. C. 269.

Castleman v. Avignone, 56 Appeals D. C. 253.

Regarding the decision of the trial court that the insurance shall be kept alive for the benefit of the daughter until she reaches the age of twenty-one years, such ruling is plainly correct.

In the absence of a statute there is no legal obligation upon the parent to support a child.

46 *Corpus Juris*, page 1269, Sec. 47.

In the 14th Edition of Kent's Commentaries, Edited by Justice Oliver Wendell Holmes, he shows conclusively in the notes, that the text stating that there is a legal obligation upon a parent to support a child, is incorrect.

In the District of Columbia it is made a misdemeanor for a parent to desert his child, under the age of sixteen years, if in necessitous circumstances.

The sections of the Code, D. C. relative to support of children, other than above, and to the power of the court in such matters, relate to *minor* children. See Sections 975 and 976, and 978 and 980 granting power to the court to protect *minor* children. After a child reaches the age of twenty-one years the child is emancipated, and likewise the parent.

In *Howard v. U. S. 2nd Federal Reporter* (2nd Series), p. 175, a much cited case, the court said:

“The general rule of law of parent and child being based on the child's incapacity, both natural and legal, and its consequent need of protection, and care, apply only while the child is under the age of majority. This is a fundamental principle that lies at the very foundation of society,

and was intended to support and maintain parental authority in the family and home, and to guard and protect the children of the family until their minds should become sufficiently cultivated and their judgment sufficiently matured to enable them to act for themselves. The precise limit of time is fixed by law, and it cannot in any cause be either enlarged or diminished by evidence, however cogent, or by argument however persuasive”.

It is respectfully claimed that the decision of the court below be affirmed.

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